



Memorandum

TO: City Council

FROM: Ron Gonzales, Mayor

SUBJECT: Proposed City Charter
Amendments Relating to
Restrictions on Outside
Employment and Councilmember
Salary Setting

DATE: August 2, 2006

Approved

Date

8/2/06

RECOMMENDATIONS

1. Approve the proposed specific language revisions to the City Charter related to outside employment for the Mayor and Councilmembers and Council salary setting for placement on the November 7, 2006, ballot.
2. Adopt a resolution approving ballot language for the proposed Charter amendments and ordering placement on the November 7, 2006, ballot.
3. Direct the City Attorney to bring back to Council, within thirty days of the passage of the proposed Charter amendment, amendments to the Municipal Code making Council staffs subject to similar employment restrictions as other City employees, requiring them to receive written permission from their Councilmember to accept outside employment.

BACKGROUND

On June 20, Councilmembers Williams and Pyle and the Mayor proposed amendments to the San José City Charter to restrict outside employment for Councilmembers and change the process for setting Council salaries by eliminating the Council's role for approving its own pay increases. Council authorized the Mayor's Office to work with City staff to prepare specific Charter revisions and ballot language for Council's consideration at the first meeting in August. That work has been completed, along with the necessary resolution calling for an election on the proposed amendments.

Council is now requested to review and act on the proposed revisions and ballot language. If Council wishes to place the proposals before the voters, action on agreed upon language must

take place at the Council meeting of August 8 since that is the last regularly scheduled meeting before the County Registrar of Voter's deadline of August 11 to place an item on the ballot for this November's election.

DISCUSSION

1. Outside Employment by Councilmembers

Current Restrictions on Outside Employment by City Employees

The San José Municipal Code and Policy Manual already prohibits City employees from having outside employment that *"...is detrimental to the service, which prevents or impedes the efficient performance of his duties in his City employment, or which is in any way in conflicts with his employment by the City..." (Attachment A)*. Under this policy City employees need permission from the City Manager to accept outside employment. The City Manager grants that permission only if he or she is satisfied that such employment will not interfere with the employee's ability to perform his or her duties, create a conflict of interest, or reflect poorly on the City organization.

Proposed Charter Revisions

The proposed Charter revisions would restrict all City Councilmembers, including the Mayor, from having outside employment and prohibit them from receiving outside income as a result of being "actively engaged" in earning that income.

There would be no restriction on "passive income" earned from any source (pensions, business, investments, etc.), provided it is not earned as a result of the member's active engagement in that business or activity. In addition, with rare exception, Councilmembers would be able to engage in their profession provided that they do not earn income from as a result of that engagement. Members would therefore be able to continue to practice their professions on a pro bono basis.

Examples of "active engagement" in earning income include, but are not limited to:

- active employment that earns wages, salaries, or commissions;
- maintaining an active business or profession; or
- providing services to clients.

Examples of income not earned as a result of active engagement in a business or activity would include, but are not limited to:

- pensions;
- dividends or interest from investments;
- income from property or royalties; or

- income from business partnerships where the member is not actively engaged in that business.

The City Attorney should be directed to bring back draft language for an ordinance regarding the implementation and enforcement to the City Council within thirty days of voter approval of these proposed revisions to the City Charter.

Purpose

The purpose of this proposed restriction is to prevent Councilmembers from “moonlighting” while serving the public as full-time elected officials. They should not have employment that interferes with their ability to carry out their Council duties in a timely way, requires them to abstain in matters that regularly come before the Council, or creates a perception that they are not fully carrying out their responsibilities as members of San José City Council serving the community.

Under the City Charter, service on the City Council is considered a fulltime position. The public rightfully expects their Councilmembers to give 100 percent attention to their responsibilities and to focus on doing the job they were elected to do by the community. *The purpose of this proposed charter amendment is to underscore the importance of fulfilling that clear expectation.* As every councilmember knows from their direct experience, service as a Councilmember is not an “8 to 5” job. Councilmembers regularly work evenings and weekends in demanding and ever-changing situations, and we are on call “24/7” throughout our terms in office. Outside employment is not appropriate or compatible with service as Councilmember simply as a practical matter of time.

Restriction of outside employment also would eliminate another potential source of conflict of interest that would require councilmembers to abstain from participating in policymaking and fulfilling their responsibilities. Although current city and state requirements for the disclosure of financial conflicts by elected officials are extensive, removing the possibility of conflict will strengthen both the reality and the public perception that councilmembers are working entirely for the public’s interest.

As we developed this proposal, we did consider the possibility of including exemptions for employment related to other government service. We ultimately decided not to include any exemptions. However, Council could consider adding exemptions in its discussion of the amendments at the Council meeting of August 8. If Council adds other exemptions, however, they must be very clear so that staff can make the necessary revisions and get them along with the adjusted ballot language and resolution to the Registrar of Voters by close of business, Friday, August 11.

Staffs of Mayor and City Council Offices

There already is an appropriate restriction on outside employment for City employees. It is time to include the Mayor, Councilmembers and their staffs so that our residents know that those who work on the legislative side of City government are focused on working exclusively for them.

As discussed in our memo of June 20, the proposed Charter amendment would apply to Councilmembers, *not* to City Council staffs. To be consistent with the intent of the amendment and with the current policy affecting City employees, we also recommend that Council direct that the Municipal Code be amended so that the staffs of Mayor and Council offices would be subject to similar employment restrictions as other City employees. This change would require these staff members to receive written permission from their Councilmember to accept outside employment, under similar criteria, which would then be on file in the City Clerk's Office. As with other City employees, failure to comply with this provision would become grounds for discipline or dismissal. We recommend the City Attorney be directed to bring back the provision as a change to the Municipal Code within thirty days of voter passage of this proposed Charter amendment.

2. Council Salary Setting

The City Charter established the Council Salary Setting Commission to recommend appropriate compensation for City Council review every two years. The Commission's charge is to recommend a salary that "*... shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.*" The Charter does not allow Council salaries to be set in any other manner (**Attachment B**).

Over the years, the Commission has done a commendable job of formulating recommendations for Council consideration (**Attachment C**). In the last two cycles, however, the Council has declined to adopt the Commission's recommendations, primarily to set an example during fiscally difficult times. As a result, Council salaries remain at where they were set five years ago in 2001. Over the long term there are practical and adverse impacts for the City Council and City government that outweigh short-term budgetary reasons for declining to act on the Commission's recommendations.

The Proposed Revisions

The proposal before the Council would amend the City Charter to allow the Commission's findings on proposed Council salaries to become effective after *two* public hearings of the Commission (the Charter now requires only one) and a majority vote of the Commission, without action by the City Council itself. Upon adoption by the Commission, the new salary level would take effect on July 1 of the year the Commission met to conduct its review, which is in odd-numbered years as specified in the Charter. The proposed Charter amendment would

therefore eliminate the requirement for the City Council to approve its own salary increases, and instead would make the Commission's recommendation the final determination.

Purpose

The purpose of this proposal is to ensure that Councilmembers and the Mayor are paid appropriate full-time salaries in accordance with the intent of the Charter, and in doing so, reduce the need for outside employment and encourage a greater number of residents to consider standing for office. Voters should be able select from well-qualified candidates for office who offer the best leadership abilities, management skills, and professional expertise available in our community, rather than only from those who can afford the major commitments of public service.

I believe this revision will ensure that the Commission is successfully and objectively carrying out the City Charter's intent that Councilmembers are paid in a way that reflects their full-time responsibilities and at levels that are comparable to other positions with similar duties and obligations. Individual Councilmembers who do not want to take a pay increase would always have the personal option of donating a portion of their salary or any increase to charity.

The proposed amendment would also remove perceived political pressure that can discourage Councilmembers from approving appropriate salaries for themselves, and would remove the possible public perception that elected officials are approving levels for their own benefit.

Connection with "Voter-Owned" Elections Proposal

The proposed Charter amendment for Council salary setting complements the Mayor's proposal for "voter-owned" elections currently being studied by the Elections Commission. The goal for both concepts is to encourage more candidates with greater diversity of talents and experience to run for office.

Publicly financed campaigns will remove the need for candidates to raise campaign contributions from special interests, which has been a significant obstacle for many well qualified people. Appropriate, competitive, and objectively determined compensation will help attract the best candidates interested in serving on the City Council. Once on the City Council, the proposed salary setting process will discourage the need for outside employment by ensuring that the Mayor and Councilmembers are paid a fulltime salary consistent with the goals expressed in the City Charter.

The combination will further our objective of ensuring that our City government will have the quality of independent leadership that our City Council is strongly committed to and that our community deserves.

Conclusion

We believe amending the City Charter to prohibit outside employment for City Councilmembers and to provide compensation for Councilmembers consistent with the intent of the City Charter will achieve several important benefits for the people of San José and their City government. It will:

1. Further the goal of “clean” government committed to the public interest.
2. Ensure the fulltime dedication of the Mayor and Councilmembers to serving the community.
3. Reduce the potential for conflicts of interest.
4. Keep the salary-setting process objective, consistent, and fair.
5. Enable more residents to consider public service on the Council.

Next Steps

If Council approves these proposals, City staff will finalize the approved Charter language, the ballot question, and the resolution calling for the election and transmit them to the Registrar of Voters by August 11, which is the County’s deadline for placing matters on the ballot for the November 7, 2006, election.

Attachments:

- A. San José Municipal Code, §3.04.1710A, Outside Employment of City Employees
- B. City Charter Section 407: The Council, Compensation
- C. History of San José Salary Setting Commission recommendations and Council salaries

Attachment A

SAN JOSE MUNICIPAL CODE

Section 3.04.1710. Restriction on outside work.

- A. No employee shall engage in any work, employment or occupation outside his city employment which is detrimental to the service, which prevents or impedes the efficient performance of his duties in his city employment, or which is in any way in conflict with his employment by the city. No employee shall engage in any work, employment or occupation outside his city employment unless and until he shall have notified the city manager of his intention to do so.
- B. If the city manager determines that any work, employment or occupation outside his city position is detrimental to the service, or prevents the efficient performance by an employee of his duties in his city employment, or is in conflict with the city employment of any such employee, then the city manager may impose reasonable conditions or limitations upon any outside work, employment or occupation authorized hereunder, or may order an employee to terminate such outside work, employment or occupation at any time.
- C. Any violation of any provision of this rule may be deemed grounds for discharge or other disciplinary action. Any employee affected by a denial of an outside work permit, or limitations or conditions upon any outside work imposed by the city manager, may appeal such action to the commission whose decision shall be binding. An appeal hereunder must be filed with the civil service commission within ten working days after notice to the employee of the denial of an outside work permit or limitations or conditions imposed on an outside work permit. The secretary of the civil service commission shall send a copy of the appeal to the city manager upon receipt of the appeal.

(Prior code § 2012.3.)

Attachment B

SAN JOSE CITY CHARTER

Section 407. The Council; Compensation.

Each member of the Council, including the Mayor, shall be paid as compensation for his or her services as a member of the Council, for each calendar month during which he or she is a member of the Council, a monthly salary which shall be established by ordinance adopted pursuant to and in accordance with the provisions hereinafter set forth in this Section. No salary shall be established for any member of the Council, including the Mayor, except as provided in this Section.

Between March 1st and April 30th of every odd-numbered year, the Council Salary Setting Commission shall recommend to the Council the amount of monthly salary which it deems appropriate for the members of the Council, including the Mayor, for the two year period commencing July 1 of that odd-numbered year. The amount recommended for each member of the Council shall be the same, except that the amount recommended for the Mayor may exceed that of the other members of the Council. The monthly salary shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.

No recommendation shall be made except upon the affirmative vote of three (3) members of the Commission. Failure of the Commission to make a recommendation in any year within the time prescribed shall be deemed to mean a recommendation that no change be made.

Each biennial recommendation, together with the reasons therefore, shall be made in writing. Before it submits any such recommendation to the Council, the Commission shall conduct at least one public hearing on the matter. When such a recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

The Council shall, by ordinance, which shall be subject to the referendum provisions of this Charter, adopt the salaries as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.

No more than one salary setting ordinance shall be adopted on the basis of any biennial recommendation, provided that the Council may, at any time, by ordinance, reduce the salaries of the members of the Council, including the Mayor. In any salary setting ordinance adopted hereunder, the salaries for each member of the Council shall be the same, except that the salary of the Mayor may exceed that of the other members of the Council. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section.

For each member of the Council, except the Mayor, a sum, as established by the Council Salary Setting Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, which he or she fails to attend in each

such calendar month; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. No deduction shall be made from the Salary of the Mayor because of his or her failure to attend any Council meeting.

Amended at election June 7, 1966

Amended at election June 5, 1973

Amended at election November 4, 1980

Amended at election November 4, 1986

Attachment C

HISTORY OF MAYOR AND COUNCIL SALARIES

At the July 17, 1933 election an amendment to the 1916 Charter was passed which approved payment of \$5 per Council meeting, not to exceed \$25 in a month, to all members of the Council, including the Mayor. Apparently, Council Members were not paid prior to that Charter change. Adoption of the 1965 Charter distinguished between the Mayor and Council Members' salaries and set new salaries to be effective July 1, 1967. (see below)

An amendment to Section 407 of the 1965 Charter was approved at the November 4, 1980 election which established a Council Salary Setting Commission to meet in odd-numbered years to recommend Mayor and Council salaries. The Council, by ordinance, adopts the recommended salaries, or a lesser amount.

Section 407 was again amended at the November 4, 1986 election to state that the salary be an amount which takes into account the full-time nature of the office and which is commensurate with salaries being paid for other public or private positions having similar full-time duties, responsibilities and obligations.

Authorizing Legislation	Date Salary Became Effective	COUNCIL Salary	MAYOR Salary
1965 Charter adopted	July 1, 1967	\$400/mo	\$600/mo
Ordinance 20683	July 1, 1981	\$15,000/yr	\$20,500/yr
Ordinance 21330	July 1, 1983	\$24,000/yr	\$31,750/yr
Ordinance 21996	July 1, 1985	\$26,200/yr	\$35,000/yr
Ordinance 21996	July 1, 1986	\$27,700/yr	\$37,000/yr
Ordinance 22531	July 1, 1987	\$40,000/yr	\$60,000/yr
Ordinance 22531	July 1, 1988	\$41,400/yr	\$62,100/yr
Ordinance 23194	July 1, 1989	\$45,750/yr	\$68,600/yr
Ordinance 23194	July 1, 1990	\$48,000/yr	\$72,000/yr
Ordinance 23809	July 1, 1991	\$52,800/yr	\$80,000/yr
Ordinance 24383	July 1, 1993	\$52,800/yr	\$80,000/yr
Ordinance 24874	July 1, 1995	\$54,400/yr	\$82,500/yr
Ordinance 24874	July 1, 1996	\$56,000/yr	\$85,000/yr
Ordinance 25299	July 1, 1997	\$58,240/yr	\$87,550/yr
Ordinance 25299	July 1, 1998	\$60,570/yr	\$90,180/yr
Ordinance 25873	July 1, 1999	\$62,500/yr	\$92,500/yr
Ordinance 25873	July 1, 2000	\$65,000/yr	\$95,000/yr
Ordinance 26384	July 1, 2001	\$70,000/yr	\$100,000/yr
Ordinance 26384	July 1, 2002	\$75,000/yr	\$105,000/yr
Ordinance 26897	July 1, 2003**	\$79,500**	\$111,300**
Ordinance 26897	July 1, 2004**	\$84,270**	\$117,978**
No Ordinance	July 1, 2005#	\$75,000#	\$105,000#
"	July 1, 2006#	\$75,000#	\$105,000#

** Recommendations accepted but not implemented; July 2002 salaries remained in effect

Council took no action to change salaries on 5/10/05; July 2002 salaries remain in effect